ORIGINAL

No. 83-6381

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

GILL PARKER, ET AL.,

Petitioners,

v.

JOHN R. BLOCK, Secretary of the United States Department of Agriculture,

and

CHARLES M. ATKINS, Commissioner of the Massachusetts Department of Public Welfare,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether certiorari should be granted to review that portion of the Court of Appeals decision which set aside the District Court order of retroactive food stamp benefits and a permanent injunction where the remedy ordered by the District Court is unrelated to the due process violation found, conflicts with the intent of the federal statute, and imposes an unnecessary and improper burden on the state.

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STATEMENT OF THE CASE

This class action was brought on behalf of more than 16,000 food stamp households challenging the form and content of a "mass change" notice issued by the Massachusetts Department of Public Welfare (the Department) in December 1981. The notice informed the recipients of across-the-board benefit reductions or terminations required by a congressional amendment to the Food Stamp Act of 1977, lowering the earned income deduction from 20% to 18%. Pub. L. No. 97-35, § 106, 95 Stat. 357 (1981), 7 U.S.C. § 2014(e).[1/]

Following a two-day trial, the District Court found that the Department's notice of the mandated change did not meet the requirements of the Due Process Clause because of the notice's language, format, and lack of individualized financial data for each particular recipient.[2/]

1/ The Secretary of Agriculture distinguishes between mass change notices, which are permitted when state or federal changes in the program affect significant portions of the caseload, and notices of adverse action, which are required prior to any reduction or termination of a particular household's benefits. Compare 7 C.F.R. § 273.12(e)(1981)(mass change notices) with 7 C.F.R. § 273.13(1981)(adverse action notices).

2/ The Department has filed a cross-petition requesting that this Court review the substantial constitutional questions raised by the Court of Appeals affirmance of the District Court on this issue.

Despite the lack of findings that the 16,000 class members were erroneously deprived of food stamp benefits, the District Court awarded retroactive food stamp benefits to all 16,000 members of the plaintiff class. In addition, it issued a permanent injunction governing the nature and content of all future food stamp notices, and required the Department to draft and promulgate state regulations, whose content was to be subject to court approval, containing specific standards for the comprehensibility and legibility of all future food stamp notices. The Commissioner of Public Welfare and the Secretary of the United States Department of Agriculture appealed from the judgment of the District Court.

The Court of Appeals affirmed the District Court's decision as to the inadequacy of the notice but set aside its order of "wide ranging relief." Instead, the Court of Appeals ordered the Department to determine whether any particular household's benefits were "improperly recalculated," and if so, to provide retroactive benefits to only those households. Poggs v. Block, 722 F.2d 933, 941 (1st Cir. 1983); App. 17.[3/]

3/ The Appendix to the petition for writ of certiorari is hereafter referred to as "App.".

The petitioners seek review of that portion of the Court of Appeals decision which addresses the propriety of the prospective and retroactive remedies ordered by the District Court.

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE COURT OF APPEALS CORRECTLY SET ASIDE THE UNNECESSARY AND OVERLY INTRUSIVE MANDATORY INJUNCTION.

A. The District Court, Not The Court Of Appeals, Misunderstood The Nature And Purpose Of A Prospective Injunction.

In reversing the order for prospective injunctive relief, the Court of Appeals noted that there is "nothing in the record to indicate that the Department acted in bad faith" nor any "reason to doubt that the state will strive to provide constitutional notice in the future." Petitioners assert that review of the prospective injunctive relief is appropriate in this Court because the Court of Appeals decision conflicts with this Court's recent decision in Pennhurst v. Halderman, 104 S. Ct. 900 (1984). The petitioners' argument with respect to the prospective relief is clearly without merit and reflects a misunderstanding of the Court of Appeals decision as well as the Pennhurst decision.

Pennhurst held that a federal court lacks the power to award injunctive relief against state officials on the basis of state law. The

petitioners rely, not on this holding, but on a footnote stating that a finding of good faith, and therefore immunity from damages, "does not affect whether an injunction might be issued . . . by a court possessed of jurisdiction." Id. at 912 n.17 (emphasis added).

Petitioners' reliance on this note is misplaced since the Court of Appeals decision is entirely consistent with the principle articulated in that footnote. The District Court injunction was not set aside simply because the Department demonstrated a lack of bad faith. Rather, the Court of Appeals considered the Department's lack of bad faith as one of several factors in order to assess whether, under the facts and circumstances of this case, a prospective mandatory injunction was necessary.

This was an appropriate consideration by the Court of Appeals since an injunction should not be granted except in the most extraordinary circumstances. Rizzo v. Goode, 423 U.S. 362, 379 (1976). Moreover, the Court of Appeals well understood that in cases involving a government defendant, a declaration is sufficient to ensure future conduct. Doran v. Salem Inn, Inc., 422 U.S. 922, 931 ("[A] district court can generally protect the interests of a federal plaintiff by entering a declaratory judgment, and therefore the stronger injunctive medicine

will be unnecessary."). Finally, where there is no proof that the state defendant will continue to engage in the proscribed conduct, an injunction is unwarranted. Poe v. Gerstein, 417 U.S. 281 (1974) (per curiam); United Transportation Union v. State Bar of Michigan, 401 U.S. 576, 584 (1971).

Here, the District Court's declaration that the challenged food stamp notice did not meet due process requirements was sufficient. The Court of Appeals properly reversed the District Court's permanent injunction as to the content, legibility, and comprehensibility of all future notices of reduction which would, of course, subject the Department to a constant threat of contempt proceedings to test the adequacy of any future food stamp notice. See Hartford-Empire v. U.S., 323 U.S. 386, 410 (1946).

It was undisputed at trial that the challenged notice of reduction, with respect to its type-size and wording, was not the Department's typical food stamp mass change notice. There was no showing that the Department planned to issue other notices with similiar type and wording. Indeed, such a showing would have been a virtual impossibility; part of the difficulty with the challenged notice stemmed from its attempt to provide a thorough explanation of the effect of the District Court's temporary restraining order on

the recipients' previous benefit reductions and appeal rights. This attempt was, in turn, thought necessary because the District Court had enjoined the notices originally issued the previous month and ordered restoration of benefits.[4/] Particularly in light of the court's declaration of rights, such a set of circumstances is hardly likely to recur.

Furthermore, with respect to the due process challenge on the basis of lack of recipient-specific data, the District Court found that the Department currently includes in all mass change notices under the Food Stamp Program each household's old and new benefit amount. App. 49. The Department's voluntary inclusion of certain recipient-specific data in current mass change food stamp notices is surely an important factor as to whether it was necessary for the District Court to order such extraordinary relief. E.g., City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283 (1982).

Under these circumstances, the Court of Appeals was correct in determining that there had been no showing that the Department is unwilling or unable to meet the dictates of a declaration. Consequently, it was correct in

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4/ The notice was in two parts; the first part explained the statutory change in the earned income deduction and appears in its entirety in the Court of Appeals decision, 722 F.2d at 936, App. 4; the second part provided the explanation of the temporary restraining order. Id.

ruling that it was improper to impose the extraordinary remedy of a permanent injunction in this case.[5/]

Although the District Court has a good deal of discretion to tailor an appropriate remedy, the exercise of that discretion is not unfettered by meaningful standards or shielded from thorough appellate review. See Albemarle Paper Co. v. Moody, 422 U.S. 405, 416 (1975). The consideration of the Department's lack of bad faith was, indeed, relevant to the District Court's proper exercise of its discretion and is in accordance with this Court's recent Pennhurst decision.

B. The Court Of Appeals Properly Recognized That The District Court's Remedial Authority Must Be Consistent With The Intent Of The Food Stamp Act.

The District Court's injunction as to the content of all future food stamp mass change notices as well as its order that the Department

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5/ As the Department makes clear in its cross-petition, an injunction or declaration prescribing the content of future notices to be applied under every set of facts and circumstances is fundamentally inconsistent with this Court's decisions on due process. The requirements of due process are "flexible and call for such procedural protections as the particular situation demands." Schweiker v. McClure, 456 U.S. 188, 200 (1982) (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)). The imposition of requirements for recipient-specific data, type size, and minimum readability levels to govern in every set of circumstances, hardly allows for the flexibility necessary to meet the unique circumstances which will inevitably give rise to future mass change notices.

draft state regulations, for its approval, with legibility and comprehensibility standards[6/] for future notices is inconsistent with the intent of the Food Stamp Act.

The details of implementing federal law in the area of public assistance, when not explicitly laid out by federal statute or regulation, are left to the states. Rosado v. Wyman, 397 U.S. 397, 406-409 (1970). The Food Stamp Program is funded by the federal government, but is largely administered by the states. 7 U.S.C. § 2020. The states are required to administer the program in a manner consistent with federal law and regulations promulgated by the Secretary of Agriculture, 7 U.S.C. §§ 2013(c), 2025(b)(1), and certain aspects of the administration of the program are explicated in great detail by federal regulations. E.g., 7 C.F.R. § 273.9(a)(1981) (eligibility criteria and benefit levels which

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6/ The District Court heard evidence offered by plaintiffs concerning typeface, size of type, capitalization, the frequency of multisyllabic words, the reading level of the average food stamp recipient, and similar matters. On this evidence the District Court concluded that the Due Process Clause requires mass change notices to be printed no smaller than eight-point type, with a mixture of upper and lower case letters, and written for a person with a fifth-to-sixth grade reading capacity. Accordingly, its permanent injunction required the Department to promulgate state regulations that set forth specific standards for the reading level and typographical format of future mass change notices. No similiar order was entered with respect to the federal defendant.

states must adhere to); 7 U.S.C. § 2014(c) and 7 C.F.R. § 274.9(d)(1981) (explicit prescription of method for computing household income for eligibility purposes).

In contrast to these explicit federal requirements, the federal statutory and regulatory scheme governing the issuance of mass change notices is silent as to the form and content of those notices. Thus, while the states must certainly draft and issue notices which meet the minimum requirements of due process, the precise contours of the states' adherence to constitutional principles, such as choice of typeface or diction, is left to the states. 7 C.F.R. § 273.12(e)(1981)(mass change notices). Compare 7 C.F.R. § 273.13(1981) (individual notice of adverse action must contain certain specific information).

The District Court's attempt to intrude on the state's implementation prerogatives, in an area delegated to the states by the Secretary of Agriculture, is inconsistent with congressional intent to leave the administration of the program up to the Secretary and each participating state. Cf. Hendrick Hudson Dist. Bd. of Ed. v. Rowley, 458 U.S. 176, 208 (1982) (in analagous federal scheme, "questions of methodology are for resolution by the states."); see also Rizzo v. Goode, 423 U.S. 362, 378 (1978)(quoting Stefanelli v. Minard, 342 U.S. 117, 120 (1951)) ("federal courts must be

constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power and state administration of its own law.'").

In sum, although the District Court has broad discretionary authority to fashion an equitable remedy, the scope of any such relief must be consistent with the intent of the Food Stamp Act. Congress intended that the Secretary, not the federal courts would set forth the requirements of the Food Stamp Program. Here, where the Secretary has allowed each state to determine the form and content of a mass change notice, the Court of Appeals was correct in holding that the District Court should not be permitted to impose specific notice requirements on the Department.

This reason, standing by itself, presents a sufficient basis for denying the writ, but it also should be denied on the basis of a related, even more compelling argument which also emanates from the terms of the Food Stamp Act. As we show in the following argument, adherence to the congressional mandate required the Court of Appeals to modify the broad relief awarded by the trial court.

III. THE COURT OF APPEALS WAS REQUIRED TO REVERSE THE AWARD OF RETROACTIVE BENEFITS TO THE ENTIRE PLAINTIFF CLASS.

A. Retroactive Monetary Relief Is Wholly Unrelated To The Finding Of An Inadequate Notice.

The District Court found that the Department's notice of congressional changes in the earned income deduction was constitutionally inadequate because, inter alia, individual recipients were not able to determine whether a factual error had been made and, therefore, whether to appeal the reduction or termination of benefits. Based upon its finding of an inadequate notice, the District Court awarded retroactive benefits to the entire class of 16,000 recipients. The Court of Appeals reversed this award of sweeping relief and instead ordered the Department to review all the recipients' files and provide retroactive benefits, but only to those recipients who, in fact, received incorrect benefits.

The Court of Appeals decision properly recognizes that a remedy must be related to "the condition alleged to offend the constitution," and should be "designed as nearly as possible to restore the victims . . . to the position they would have occupied in the absence of such conduct." Milliken v. Bradley, 433 U.S. 267, 280 (1977); Dayton Board of Education v. Brinkman, 433 U.S. 406, 417 (1977).

Under the petitioners' theory of due process, an insufficient notice, by itself, results in erroneous benefits, even if those benefits were properly calculated and issued. This theory, of course, fails to recognize that "[p]rocess is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement." Olim v. Wakinekona, 103 S. Ct. 1741, 1748 (1983); Codd v. Velger, 429 U.S. 624, 627 (1977)(per curiam); See also Mitchell v. W.T. Grant Co., 416 U.S. 600, 616 (1974)(due process protects substantial rights, it does not guarantee a particular form of procedure).

Here, the plaintiffs' substantive interest is in having their food stamp benefits properly calculated using the congressionally-mandated 18% earned income deduction. The vast majority of recipients, in fact, received the proper amount of food stamps.7/ To provide them with retroactive benefits is not to restore them to the position they would have been in had they received a notice with more information, but

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7/ Since the federal change simply required a computer recalculation of each household's benefits using financial data already on file, the risk of an error in benefits, attributable to the implementation of this reduction, was minimal. The Court of Appeals properly recognized "the absence of any showing that a substantial percentage of these recipients had their benefits improperly reduced or terminated." 722 F.2d at 941; App. 16.

rather, to provide awindfall not contemplated by the Food Stamp Act. It would do so at taxpayers' expense.

B. The Food Stamp Act Allows For The Payment Of Retroactive Benefits To Only Those Recipients Who Have Received An Incorrect Allotment.

The Food Stamp Act provides for restoration of benefits which have been "wrongfully denied or terminated". 7 U.S.C. § 2020(e)(11). It also generally provides for notice and hearing prior to any "adverse action" by the state. 7 U.S.C. § 2020(e)(10).[8/] The petitioners' interpretation of the Act's restoration provision is again based upon the faulty premise that if the Act's notice requirements have not been followed,[9/] then benefits have automatically been "wrongfully denied". The

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8/ While the Food Stamp Act addresses generally a notice prior to an adverse action, the Secretary of Agriculture, in his administration of the Program, distinguishes between the type of notice necessary prior to an "adverse action" affecting a particular household and that required prior to the implementation of across-the-board changes in the program affecting a significant portion of the caseload. Compare 7 C.F.R. § 273.12(e)(1)(ii)(1981) (mass change notices) with 7 C.F.R. § 273.13 (1981) (individual adverse action notices).

9/ The Court of Appeals equated the constitutional and statutory standards, holding that if the notice was insufficient for purposes of the Due Process Clause, then it was insufficient for purposes of the statute's general notice requirement. 722 F.2d at 940; App. 14-15.

Act's relevant legislative history, which reflects a clear intent to reduce program costs while providing benefits only to those who are in financial need, contradicts petitioners' argument.

The restoration of benefits provision was amended by the Food Stamp Act of 1977, Pub. L. 95-113, § 1301, 91 Stat. 958 (1977).[10/] The House Report discussing this provision clearly indicates that benefits should be restored only to those households which received amounts less than they were entitled to receive. "Thus, if a household lost benefits because it was found to be ineligible when it was eligible or because its allotment was not as high as it should have been such benefits would be recouped in the form of allotment add-ons." H.R. Rep. No. 95-464, 95th Congress, 1st Sess. 285, reprinted in 1977 U.S. Code Cong. & Ad. News 2220 (emphasis added). There is no indication that an improper notice, standing alone, should give rise to restoration of benefits.

The congressional amendment to the earned income deduction which resulted in this lawsuit

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10/ The 1977 amendments wrought major changes in the Food Stamp Act as a whole, particularly with respect to tightening program administration, eliminating the non-needy from the program, and holding program costs close to current program levels. See H.R. Rep. No. 95-464, 95th Congress, 1st Sess. 2, reprinted in 1977 U.S. Code Cong. & Ad. News 1978.

was part of the 1981 Omnibus Budget Reconciliation Act, Pub. L. 97-35, 95 Stat. 357 (1981), the sole purpose of which was to reduce federal spending. See S. Rep. No. 97-139, 97th Cong., 1st Sess. 2-3, reprinted in 1981 U.S. Code Cong. & Ad. News 397-98. Similarly, the express purpose of the 1981 amendments to the Food Stamp Act was to reduce the growth of Food Stamp Program expenditures "by restricting eligiblity for the Program and reducing benefits for certain households which remain eligible." 46 Fed. Reg. 44712 (Sept. 4, 1981). Lowering the earned income deduction by 2% was part of this effort to reduce total program costs by reducing benefits to those households with earned income. Yet, the District Court's order did what Congress specifically required states not to do; that is, it required the Department to compute eligible recipients' benefits based upon a 20% rather than 18% earned income deduction. Cf. Schweiker v. Hansen, 450 U.S. 785, 788 (1981) (per curiam) ("duty of all courts to observe the conditions defined by Congress for charging the public treasury").

Even where a household has actually been denied the correct benefit level, an award of retroactive benefits more than two years after the wrongful denial is inconsistent with the stated congressional purpose of the Food Stamp Act. The purpose of the Act is to raise the level of nutrition among low income households

by increasing food purchasing power. Pub. L. 95-113, § 1301, 91 Stat. 958, 7 U.S.C. § 2011. "As time goes by, retroactive payments become compensatory rather than remedial; the coincidence between previously ascertained and existing needs becomes less clear." Edelman v. Jordan, 415 U.S. 651, 666 n.11 (1974) (quoting Rothstein v. Wyman, 467 F.2d 226, 235 (2nd Cir. 1972)). At least two circuits have followed this reasoning to bar retroactive benefits even where the households received a benefit amount less than that to which they were entitled. See Klaips v. Bergland, 715 F.2d 477, 484-485 (10th Cir. 1983); see also Colbeth v. Wilson, 554 F. Supp. 539, (D. Vt. 1982), aff'd, 707 F.2d 57 (2nd Cir. 1983).

The Court of Appeals decision, in contrast to the District Court action, is entirely consistent with the purpose of the Food Stamp Act. Under its formulation, retroactive benefits are extended only to those households which received an erroneous allotment for whatever reason. The Court of Appeals did, indeed, reverse the award, but it did so only as to those households whose benefits were correctly computed in accordance with the dictates of Congress using the 18%, rather than the 20%, earned income deduction. Contrary to petitioners' argument, neither the Food Stamp Act, decisions of this Court, nor considerations of equity require more than this.

CONCLUSION

For the foregoing reasons, the Commissioner of Public Welfare requests that the petition for a writ of certiorari be denied. If the writ issues, however, the Commissioner requests that his cross-petition be granted so that the entire case can be presented to this Court for review.

Respectfully submitted,

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Dated: April 6, 1984